

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

~~~~~  
CORY CALDWELL,

Plaintiff,

vs

9:09-CV-580

GETTMANN, Corrections Officer; J. STOUT,  
Medical Nurse; and WINSTON, Correctional  
Officer, Upstate Correctional Facility, formerly  
known as John Doe,

Defendants.  
~~~~~

APPEARANCES:

CORY CALDWELL  
07-A-6900  
Plaintiff, Pro Se  
UpState Correctional Facility  
PO Bo 2001  
Malone, NY 12953

HON. ANDREW M. CUOMO  
Attorney General of the  
State of New York  
Attorney for Defendants  
Department of Law  
The Capitol  
Albany, New York 12224

ADRIENNE J. KERWIN, ESQ.  
Asst. Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Plaintiff, Cory Caldwell, commenced this civil rights action in May 2009, pursuant to 42 U.S.C. § 1983. By Report-Recommendation dated July 23, 2010, the Honorable David E. Peebles, United States Magistrate Judge, recommended that defendants' motion to dismiss (Docket No. 17) be granted, in part, and that plaintiff's claims for negligence be dismissed

with prejudice, and that plaintiff's claims for medical indifference, including all claims against defendant J. Stout, be dismissed with leave to replead; and further recommended that defendants' motion to dismiss otherwise be denied. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the file, and the recommendations of Magistrate Judge Peebles, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. 636(b)(1).

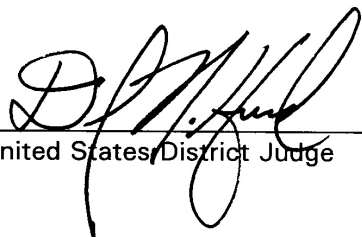
Accordingly, it is

ORDERED that

1. Defendants' motion to dismiss (Docket No. 17) is GRANTED, in part;
2. Plaintiff's claims for negligence are DISMISSED with prejudice;
3. Plaintiff's claims for medical indifference, including all claims against defendant J. Stout, are DISMISSED with leave to replead;
4. Defendants' motion to dismiss otherwise is DENIED;
5. The file is returned to the Magistrate Judge for any further proceedings.

IT IS SO ORDERED.

Dated: August 27, 2010  
Utica, New York.

  
United States District Judge